

REMARKS

The Office Action mailed May 22, 2003, has been carefully considered. The present Amendment is intended to be a complete response thereto and to place the case in condition for allowance. A Petition for a two-month extension of time and fee therefor are filed herewith.

Claims 1-20 and 22-27 are pending.

Claims 1 and 8 have been amended. Support for the amendment to claim 1 is found, *inter alia*, in the specification on page 4, lines 23-25. Claim 8 has been amended to correct a spelling error.

Claims 21 has previously been cancelled.

Claims 23-27 have been added. Support for claim 23 is found, *inter alia*, in the specification on page 4, lines 23-25, where it makes clear that the pouches cushion the product. A skilled person would find it implicit in this statement that the volume of the pouch must be greater than the volume of the packed foodstuff. If it is less than the volume of the packed foodstuff, damage to the packed foodstuff would inevitably ensue; and this is clearly to be avoided in the invention. Support for claim 24 is found, *inter alia*, in the specification on page 5, lines 17-19 and the figures. On page 5, lines 17-19, it is stated that the pouches are folded in a space efficient manner. The skilled person will understand that this means that the space between cartons is substantially eliminated and therefore not wasted. That is, the pouches are folded into a space filling pattern. Support for claim 25 is found, *inter alia*, in the FIGS. 4-10, which clearly show that, once the pouches have been folded into various patterns, they are held in those patterns by the carton. Support for claim 26 is found, *inter alia*, in the specification on page 5, lines 17-24, where two steps are described. In the first step, from lines 17-19, the folding

of the pouches is referred to. In the second step, from lines 20-24, the insertion of the folded strip into the carton is described. The skilled person would find it clear that a two step loading process is disclosed in the specification. Support for claim 27 is found, *inter alia*, in the FIGS. 4-10, which clearly show that bends occur between the pouches.

Claims 1-20 and 22 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because the term “sufficient” in claim 1 is a relative term. Applicant respectfully traverses the rejection.

Claim 1 has been amended to recite “a predetermined amount of air” instead of “sufficient air”. The specification clearly show, on page 4, lines 23-25, that the amount of air is “determined by the pouch dimensions ... so as to be sufficient for the pouch ... to protect the food-stuff.” Therefore, the claims are now definite because the specification clearly show how to calculate the “predetermined amount of air”. This amendment is intended to be clarifying and in no way narrowing or otherwise limiting.

Claims 1-20 and 22 stand rejected under 35 U.S.C. § 103(a) as being obvious over Osgood (U.S. Patent No. 5,134,001) in view of Lerner et al. (U.S. Patent No. 4,201,029). Applicant respectfully traverses the rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP 2143.

First, the cited references, taken alone or in combination, fail to disclose every element of the claimed invention. In particular, there is no disclosure of 1) calculating the pouch dimensions such that each pouch contains the desired quantity of material as well as a predetermined amount of air for protecting the material by cushioning; and 2) a strip of sealed pouches.

Osgood discloses a method of packaging material comprising the steps of forming a tube, forming a first seal at a lower end of the tube, feeding a predetermined amount of material to be packaged into the tube, forming a second seal in the tube at a predetermined distance above the first seal, repeating the steps of feeding the material and sealing along tube. However, there is no intention to form a strip of sealed pouches. In an essential step, the pouches are separated from each other (see column 3, lines 51-54). It is clear from Figure 1 and Figure 2 that the separation occurs almost immediately after a pouch is formed so that no strip of filled pouches is created. Osmond fails to disclose 1) calculating the pouch dimensions such that each pouch contains the desired quantity of material as well as a predetermined amount of air for protecting the material by cushioning; and 2) a strip of sealed pouches.

Lerner et al. relate to a different area of art. In particular, that patent does not relate to storing filled pouches. In fact, it relates to densely packing open plastic bags so that they can be subsequently used (see column 3 line 1-5). It is clear from both figures 1 and 2 that, when the open bags are fed into the carton, they are completely flat. They do not contain any air, let alone a quantity of air sufficient to protect a fragile material contained in the pouches. Indeed, it is the intention of Lerner et al. that air is squeezed out between the bags so that as many flat bags can be contained in the box as possible (see column 3, lines 39-43; and column 5, lines 40-43). In

fact, the present invention differs from the disclosure of Lerner et al. Whereas Lerner is concerned with filling a box with as many flat bags as possible, the present invention is concerned with packing a predetermined amount of fragile foodstuff into a container in such a way that it will not be damaged. Further, whereas the bags of Lerner et al. are open bags, the pouches of the present invention are sealed. Therefore, Lerner et al. fails to disclose every element of the claims.

Further, the references fail to disclose elements of the dependent claims. Each of the configurations claimed in claims 2-20 and 22-27 are not disclosed in Osgood and Lerner et al., taken alone or in combination.

Second, there is no motivation to combine the references because they teach away from the present invention. Osmond, as discussed above, teaches separating the pouches from each other (see column 3, lines 51-54), thus, teaching away from the formation of a strip of sealed pouches of the present invention. Lerner et al., as discussed above, teaches dense packing of open bags lying flat in a container (see column 3, lines 39-43; and column 5, lines 40-43), which teaches away from having air inside sealed pouches.

Nevertheless, even if the references can be combined, which Applicant respectfully rejects, the combination would not result in the present invention. The combination of the references would have resulted in packing of individual pouches of Osmond (not a strip of sealed pouches as required by the present invention) into a box, and flattening the pouches to form a densely packed stack of pouches. This would be inapposite to the present invention where air sealed into the pouches protects the content of the pouches from being crushed.

The present invention uses a strip of pouches to form a stable array inside the carton whereby fragile contents of the pouches are protected by an air cushion. Numerous advantages can be obtained with the packaging method of the present invention. Each individual pouch contains sufficient air to protect its contents. Because the pouches are connected together in a strip, each pouch also holds each connected pouch to prevent movement thereof, further protecting the contents from damage due to collisions. The strips of pouches in the invention can be stored in a container in such a way that they are all supported by the carton and by each other, further protecting the contents. None of this is contemplated by the Osgood and Lerner et al., taken alone or in combination.

Therefore, for the reasons noted, Osgood in view of Lerner et al. fail to render the present invention obvious under the meaning of 35 U.S.C. § 103(a). Accordingly, the rejection is improper and should be withdrawn.

As all grounds of rejection have been addressed and overcome, entry of this Amendment as issuance of a Notice of Allowance of the pending claims, as now presented, are respectfully solicited.

In the event that there are any questions relating to this Amendment or to the application in general, it would be appreciated if the examiner would telephone the undersigned attorney concerning such questions so that the prosecution of this application may be expedited.

Please charge any shortage of fees or credit any overpayment thereof to BLANK ROME LLP, Deposit Account No. 23-2185 (000026-00032). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not

accompany this response, Applicant hereby petitions under 37 C.F.R. 1.136(a) for an extension of time for as many months as are required to render this submission timely.

Any fees due are authorized above.

Respectfully submitted,

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